IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4460 of 2006
Date of Decision: 9.10.2006

Charan Singh Malhi ...Petitioner

Vs.

Smt. Ram Piari & Anr. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Sudeep Mahajan, Advocate,
for the petitioner.

Mr. Puneet Jindal, Advocate,
for the respondents.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the order dated 317.2005 passed by the learned Rent Controller, Jalandhar rejecting the application filed by the petitioner for leave to defend and thus, ordering the eviction of the petitioner from the shop in dispute.

The respondent-landlord filed a petition under Section 13-B of the East Punjab Rent Restriction Act, 1949 (for short the Act) seeking ejectment of the respondent/ petitioner from Shop No.BXIII 47415 on the ground that the respondent was tenant in the demised premises on monthly rent of Rs.800/- vide Rent Note dated 4.2.1994. It was claimed that the respondents herein i.e. husband and wife are Non Resident Indians as

defined under section 2 (dd) of the Act and the petition for eviction was filed by respondent No.1 on her behalf and also on behalf of respondent No.2 being his attorney. It was claimed in the rent petition that the landlord who was Non Resident Indian had a bona fide intention to settle now permanently in India and required the demised shop for their bona fide use and occupation as they wanted to run the business jointly in the demised shop. It was claimed that the respondents have no other property in their possession in the area of Jalandhar and that they had also not vacated any commercial property in the area of Jalandhar since 1949. It was also claimed that the petitioner was in arrears of rent since 1994 for which separate petition was filed.

On notice the petitioner appeared and moved an application for leave to contest the petition in which it was claimed that the petitioner was tenant for the last 18-19 years and respondent No.2 was the real brother of the wife of the petitioner. It was also claimed that the rent was being deposited regularly in the bank account and rent up to 31.3.2004 stands deposited. It was further claimed that the respondents closed their account and did not receive the rent. It was further claimed that a cheque for Rs.12,000/- was sent towards rent for one year but the same was received back un-encashed. Bona fide requirement of the respondents was disputed by the petitioner on the plea that they are British citizen and they have ceased to be Indian citizens and therefore, Indian Laws were not applicable. It was further claimed that family of the respondents was well settled in Britain and they had no intention to permanently return to India.

Learned Rent Controller rejected the application by holding that the respondents proved on record that they were Non Indian

Residents and further they are intending to return to India and that they needed the property in dispute for their bona fide requirements. It was held that once the conditions as envisaged under Section 13-B of the Act were fulfilled the respondents were entitled to seek ejectment.

Mr.Sudeep Mahajan, learned counsel appearing for the petitioner challenged the finding on the plea that the petitioner-respondents have failed to prove that the premises were bona fide required for their use. The contention of the learned counsel for the petitioner was that once the entire family of the respondents was settled in England and they were getting social welfare security and also that they had better medical facilities in Britain, therefore, it cannot be said that their intention was bona fide. On these pleas it was contended that leave to defend ought to have been granted.

In support of his contention, learned counsel for the petitioner placed reliance on the judgment of Hon'ble Supreme Court in **Baldev Singh Bajwa Vs. Monish Saini 2005 (2) RLR 488** and special reference was made to paras No.22 and 26 of the judgment which read as under:

> "22. Then golden rule of construction is that when the words of legislation are plain and unambiguous, effect must be given to them. The basic, principle on which this rule is based since the words must have spoken as clearly to legislatures, as to judges, it may be safely presumed that the legislature intended what the words plainly say. The legislative intent of the enactment may be gathered from several sources which is from the statute itself, from the preamble to the statute, from the statement of objects and reasons, from the legislative debates,

reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where they may be allowed. Record may be had from legislative history and latest legislation also. But the primary rule of construction would be to ascertain the plain language used in the enactment which advances the purposes and object of the legislation. No doubt the legislative intent in enacting Section 13-B, is to provided for immediate possession of the accommodation owned by the NRI but it cannot be assumed that the legislature wants the NRI landlord/ owner, to get the possession of the accommodation from the tenant even if he does not require it and the need pleaded is proved to be a mere pretext to get the accommodation vacated. Had that not been the intention of the legislatures, the phrase required by the NRI landlord would not have been used in Section 13-B. The classified landlords are given the benefit of summary trial under Section 18-A of the Act. The summary trial is in two parts. Sub-s.-4 provides that after the service of summons the tenant has no right to contest the prayer for eviction from the residential building/ or schedule building and/ or non-residential building as the case may be unless the files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain leave from the controller as provided in Sub-s-5 of Section 13-B to contest the matter. If the tenant defaults to appear in pursuance of summons or when he does not get

leave to contest, the controller shall presume the statements made by the N'RI in his petition have bee admitted by the tenant and pass an order of eviction. This eventually is contemplated when a tenant does not appear in pursuance of the summon issued and served or where the leave to contest has not been granted by the Controller. The second facet of the Section comes into operation when the leave to contest is granted by the Controller. Sub-s. (6) of Section 18-A provides that the controller has to commence the hearing of the petition not later than one month from the date on which the leave was granted to the tenant to contest and he has to hear the application from day-to-day till the hearing is concluded and the application is decided. It is further provided that the procedure which shall be followed in deciding the application would be as it being practiced by Court of Small Causes. No appeal or second appeal is provided. From the aforesaid it is absolutely apparent that even when leave would be given to the tenant to contest legislatures have taken care of expeditious disposal of the petition for ejectment filed by the NRI landlord. Trial of the issue of bona fide requirement, of the landlord in the procedure prescribed would not take much time and thus we cannot accept the argument that the phrase “required” used by the legislature in Section 13-B would not mean bona fide or genuine requirement and the Section has to be construed as and when the allegation is made by the landlord of his need, it is to be taken as gospel truth and the

tenant's right to defend on that count is completely extinguished and given a go-by. We do not think High Court is right in holding that mere prayer of the NRI landlord that tenanted premises is required by him or his dependent living with him entails decree of eviction on the mere allegation of requirement and no leave to contest can be given in respect of cases which are covered by various provisions restricting the right of the landlord to deal with the premises taken possession of by him in pursuance of the decree for eviction passed by the Controller under Section 13-B of the Act of 1949. We hold that allegations made by the NRI landlord of his requirement shall be presumed to be genuine and bona fide unless rebutted by the tenant by placement of cogent and material facts and evidence in support thereof at the stage of 'leave to contest' before the Controller. We feel any other interpretation would completely whittled down and deny the tenant's right to show and prove that landlord does not in fact, or in law require suit premises.

26. On the interpretation given by us and on a plain reading of the provisions, once in a life time possession (permission?) is given to a NRI to get one building vacated in a summary manner. A Non-resident Indian landlord is required to prove that:- (i) he is a NRI; (ii) that he has returned to India permanently or for the temporary period; (iii) requirement of the accommodation by him or his dependent is genuine and; (iv) he is the owner of the prop0erty for the last five years

> before the institution of the proceedings for ejectment before the Controller. The tenant's affidavit asking for leave to contest the NRI landlord's application should confine to the grounds which NRI landlord is required to prove, to get ejectment under Section 13-B of the Act. The Controller's power to give leave to contest the application filed under Section 13-B circumscribe to the grounds and inquiry to the aspects specified in the Section 13-B. The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. Inquiry would be confined to Section 13-B and no other aspect shall, be considered by the controller."

I have considered the arguments raised by the learned counsel for the petitioner and find no force in the same. In para No.20 of the said judgment it has been held as under:-

> "20. .....A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine."

The learned Trial Court, therefore, has rightly come to the conclusion that the petitioner has failed to bring necessary facts and particulars on record supported by documentary evidence, to show that the requirement was not bona fide. The contention of the learned counsel for the petitioner that in view of observations made in paras No.22 and 26 of the judgment of Hon'ble Supreme Court in **Baldev Singh Bajwa Vs. Monish Saini (supra)** the petitioner has right to contest the claim merely because he has asserted that the need is not bona fide and that the respondents were well settled in Britain cannot be sustained. The petitioner has remedy to seek possession back in case premises in dispute is not occupied.

Therefore, in view of the law laid down by the Hon'ble Supreme Court in **Baldev Singh Bajwa Vs. Monish Saini (supra)** there is no merit in the present revision petition which is accordingly dismissed.

(Vinod K.Sharma)
9.10.2006 Judge
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